

RevEx Issue #8 Fertilizer and Soil or Plant Additive (SPA) permits – Meeting Notes
4/7/16

In attendance: Larry Vogel, Joe Sikora, Jaime Staufenbeil, Jim Brunner, Michael Elder, Daniel Peterson, Terry Walsh, Ryan Hartberg, Steve Huntsly, Steve Constantine, Amy Winters, Rebecca Peters, Tom Bressner, Robby Personette, Jennifer Heaton-Amrhein, Lori Bowman, Deb Viedma, Stephanie Statz, Stacie Ashby, Lacey Cochart, Mae Friederich, Amy Basel, Doug Alderman (on phone), Stu Lebo (on phone), Mary Jo Alexander (on phone), Paul Ferguson (on phone)

Lori Bowman opened the meeting with introductions and an overview of the BAMIT and RevEx Project, including all of the issues being discussed and the timelines. There have been eight RevEx meetings prior to this one, and Issue #8 (fertilizer and SPA permits) is the last subcommittee to meet. Bowman stated that once the subcommittees finish their work, staff will write a report that will be vetted by others in the department and all RevEx participants. The goal is for the recommendations to be considered during the FY 17-19 biennial budget process, with implementation of any approved statutory changes beginning the following license cycles (timeline varies by license).

Amy Basel presented information about Wisconsin's requirements for fertilizer and SPA permits that are issued to products. Fertilizer permits are required for products below 24% combined N-P-K. The committee asked why products above 24% N-P-K and organics are exempt. Bowman stated that she did not know why those decisions were made as it was in statute or rule before she started at DATCP. Bowman also explained that there are no national fertilizer or SPA standards, so states have extremely varied requirements.

Basel also explained the difference between a license and a permit. A company needs a license to manufacture or distribute in Wisconsin and some products require a permit in order to be sold within the state. The product permits remain active as long as the company maintains an active license and the product does not change. A new permit would be required when a permitted product undergoes a name change, grade, formulation or other significant change (e.g., claims). Changes in grade or formulation may require that an amended permit be issued. There are many circumstances that determine when a new permit is required, and Bowman suggested this discussion be put in the "parking lot" and that DATCP work on developing clear instructions for industry. She also stated that as we move toward electronic labels we want to have the ability for the system to automatically review the label for any changes.

The committee also asked about scientific substantiation and if the department looks at studies for the products that are coming out which are new SPAs. Bowman and Basel responded that the department asks for the method of analysis and scientific studies as required by ch. ATCP 40.48, Wis. Adm. Code. Staff look at peer reviewed studies and confer with counterparts in the lab and university as needed to verify that the product is efficacious for use within conditions that are identical/similar to those within the state of Wisconsin. Appendix D and E in ch. ATCP 40, Wis. Adm. Code also outline field test standards and field test report standards.

Robby Personette provided an overview of the number of active and historical fertilizer and SPA permits in Wisconsin. He explained that permits that do not expire are difficult for the department and industry to manage and that neither DATCP nor licensees understand what products are actually legally allowed

to be sold in the marketplace. Bowman stated that DATCP does not have any preconceived notions about what recommendations may come from the committee and genuinely wants an open discussion.

Jennifer Heaton-Amrhein presented three concepts for the committee to discuss. **Concept A** would maintain a one-time permit, but require annual registration. The committee felt that Concept A was similar to the existing process used during the past licensing cycle. This option maintains the one-time permit (and one-time fee) and would require licensees to annually re-register the products at renewal time. Licensees would be given an option to keep the permit active, amend it, or discontinue it. New product permits could be applied for at any time. Most committee members felt this was a good option, and were open to a minimal annual per permit maintenance fee. Some members said they would keep their permits active just in case, while others felt they would more actively manage their permits.

Concept B would establish a multi-year permit with an expiration date (i.e. five year permit). The committee did not like this concept. Licensees were concerned that there could be staggered expiration dates for permits given at different times, but also did not like the idea of all of a company's permits having the same expiration date similar to the pesticide certification program (and thus not really be a five year permit if new products were added during any five year cycle). Overall, they felt this option would be more administratively complicated and burdensome for industry and DATCP.

Concept C would eliminate the one-time permit and replace it with an annual registration process similar to that used in other states. This would require a full registration fee--but would not require an entirely new permit--each year. There was some discussion among the Committee that Concept A and Concept C were fairly similar. Bowman explained that in Concept C, the permit would be completely replaced with a registration more similar to that used in other states.

The committee further discussed the three concepts presented. Additional discussion points included:

- Could there be a combination product license (Fertilizer and SPA) for those companies that have combination products? Bowman stated that creating yet another license/permit for combination products doesn't seem to solve the problem and creates more confusion. Committee members suggested that the license renewals be at the same time then, so all products permits could be renewed on the same cycle.
- What is an appropriate permit, renewal or maintenance fee? The committee discussed the initial permit fee and commented that the renewal or maintenance fee should be manageable. A suggestion was made to have a minimal renewal fee or maintenance fee to encourage companies to maintain their permit list. Some members said they would probably just keep all permits active in case they have product in the marketplace. Others said they would more actively manage their permits.
- Would permits be discontinued? Bowman mentioned that Concept A, we could create a discontinuation process similar to pesticide products in which the company pays a discontinuation fee for a year and if the product is found that year or any year thereafter, there is no violation or penalty if the discontinuation fee was paid. Some members mentioned that most states do not have a formal discontinuation process for fertilizer and SPA products.

- Would labels be required each year? Bowman stated that labels might be submitted each year (as with pesticide product registrations), but would not go through a full review each year. Licensees might identify on the renewal form if changes had been made that would require a more extensive review. Ideally, a new IT system might be able to automatically compare labels and flag those with significant changes.

A couple of companies stated that they liked Concept C, which is similar to what other states do. A suggestion was also made that Virginia does a nice job for annual registrations by having all products for fertilizers and SPA's listed on the same renewal. A suggestion was made that at least some fee be charged for an annual renewal in order to have licensees take the process seriously; with a \$0 fee, there is no incentive to discontinue obsolete products.

Most committee members seemed to prefer—or could live with—Concept A, a one-time permit with an annual, nominal renewal fee. They said that simplification and communication is more important than a specific fee. They also strongly preferred all fertilizer and SPA licenses and products be on the same renewal cycle to help those companies that have both types of licenses and product permits. However, there was no consensus about the best time of year for the license renewals.

Additional questions and comments from the committee:

- What is with the \$41.20 fertilizer license fee? Bowman explained that the license fee includes several different fees that have been changed over the years by the Legislature. The most recent 20% reduction in the ACCP fee left the total fee at \$41.20. The department's goal is to have a round number (ending in a 0 or 5) that makes it easier for staff and licensees.
- When does potting soil require a permit? Bowman explained that potting soil that guarantees plant nutrients would need a fertilizer permit, per the definition in ATCP 40, Wis. Adm. Code. Potting soil labeled with performance claims associated with its use as a soil amendment would require a SPA permit.
- Several members mentioned they would like to see online licensing and online payments.

Based on the feedback received at this meeting, Bowman suggested sending out a survey to all licensees to determine if there is support for Concept A. The survey will provide some background to companies and describe the concepts to get feedback from a broader spectrum of industry than just those in the room. The survey would also gather information about what time of year would be best if the fertilizer and SPA license renewals were to occur concurrently.

Lori thanked the attendees for their open discussion of the issues and stated that it is great to work with industry that is willing to discuss these issues and come to a consensus.

The meeting adjourned at 1:45pm.